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AT 8:30 _____ M
WILLIAM F. WALSH
CLERK

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MERCK & CO., INC.,)	DOCUMENT ELECTRONICALLY
)	FILED
Plaintiff,)	
)	District Judge Mary L. Cooper
v.)	Magistrate Judge John J. Hughes
)	
)	Civil Action Nos.
)	06-266 & 06-268 (MLC)
HI-TECH PHARMACAL CO., INC.,)	(Consolidated)
)	
Defendant.)	

ORDER + JUDGMENT

THIS MATTER having been opened to the Court by Lerner, David,
Littenberg, Krumholz & Mentlik, LLP and Alfred B. Engelberg, attorneys for defendant
Hi-Tech Pharmacal Co., Inc. ("Hi-Tech"), on its motion to dismiss pursuant to Fed. R.
Civ. P. 12(b)(6) or for entry of final judgment in favor of plaintiff Merck & Co., Inc.

("Merck"), and by Drinker Biddle & Reath LLP and Fitzpatrick, Cella, Harper & Scinto, attorneys for plaintiff Merck, on its cross-motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), the Court having considered all papers filed in support of and in opposition to Hi-Tech's motion and Merck's cross-motion, and on all prior proceedings herein, and for other good cause shown,

IT IS on this 25th day of April 2006;

(AND ADJUDGED)
ORDERED as follows:

- (1) Hi-Tech's motion to dismiss ^(colkt entry no. 8) is DENIED;
- (2) Merck's cross-motion for judgment on the pleadings ^(colkt entry no. 17) is

GRANTED;

(3) Final judgment ^(is hereby granted) ~~shall be entered forthwith~~ in favor of Merck on the complaints in each of Civil Action Nos. 06-266 and 06-268 (consolidated), that defendant Hi-Tech has infringed United States Patent No. 4,797,413 ("the '413 patent") by filing in the United States Food & Drug Administration Abbreviated New Drug Applications Nos. 77-846 and 77-847 ("ANDA Nos. 77-846 and 77-847");

(4) Defendant, its officers, agents, attorneys and employees, and those acting in privity or concert with them are restrained and enjoined from engaging in the commercial manufacture, use, offer to sell or sale within the United States, or importation into the United States, of drug products as claimed in the '413 patent;

(5) The effective date of any approval of ANDA Nos. 77-846 and 77-847 shall be a date that is not earlier than October 28, 2008, which is the expiration date of the '413 patent including its patent term extension pursuant to 35 U.S.C. § 156 and six months of pediatric exclusivity pursuant to 21 U.S.C. § 355a.

KING PHARMACEUTICALS, INC.
v.
TEVA PHARMACEUTICALS, INC.,
409 F.Supp.2d 609 (D.N.J. 2006);
and

(6) Proceedings on Merck's claim for attorneys fees under 35 U.S.C.

§§ 271(c)(4) and 285 are stayed until after the final resolution of any appeal of this Order.

(7) *The Clerk shall mark this case CLOSED, subject to reopening for further proceedings as appropriate.*

Mary L. Cooper

HONORABLE MARY L. COOPER
UNITED STATES DISTRICT JUDGE

APRIL 25, 2006

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